

EDWIN W. WUTZKE

IBLA 70-206

Decided October 28, 1971

Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals:

Statement of Reasons

An appeal to the Director of the Bureau of Land Management is properly dismissed where three months elapsed from the date on which the notice of appeal was filed and the appellant failed to file any statement of reasons in support of the appeal and did not request an extension of time within which to file such statement.

EDWIN W. WUTZKE

: Appeal dismissed

: Affirmed

## DECISION

Edwin W. Wutzke has appealed to the Secretary of the Interior from a decision of the Bureau of Land Management, dated June 3, 1970, dismissing his appeal filed on March 2, 1970, from a hearing examiner's decision of December 9, 1969. The appeal was dismissed because Wutzke failed to file a statement of reasons and did not point out where the hearing examiner's decision was in error. The hearing examiner declared Wutzke's Black Horse lode mining claim located in Helena National Forest null and void for lack of discovery of a valuable mineral.

The regulation then in effect, 43 CFR 1842.5-1, 1/ required that a statement of reasons for the appeal must be filed in the office of the Director of the Bureau of Land Management within 30 days after a notice of appeal is filed or be subject to summary dismissal. This would have required the appellant to file his statement by April 1, 1970.

The Bureau of Land Management decision was based on the assumption that dismissal of the appeal was mandatory. However, the determination of whether an appeal should be dismissed for failure to file timely a statement of reasons lay within the discretion of the Director. U.S. v. Richard T. Haskins, 3 IBLA 77 (1971). The authority of the Director of the Bureau of Land Management to decide appeals has been transferred to the Board of Land Appeals (211 DM 13.5; 35 F. R. 12081). Therefore, we must now determine whether the circumstances warranted a dismissal of the appeal.

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1/ This designation was in effect in 1970. The current regulation is found at 43 CFR 4.412 (36 F. R. 7200).

Although three months elapsed from the date of his notice of appeal to the date of the dismissal the appellant took no action. Despite a personal tragedy which occurred in March, the appellant had adequate time within which to file a statement of reasons with an explanation or at least to request an extension. Accordingly the dismissal of the appeal was proper.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision of the Bureau of Land Management dismissing the appeal is affirmed.

Martin Ritvo, Member

We concur:

Edward W. Stuebing, Member

Frederick Fishman, Member.

